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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM DOCKET NO. 92-41
)
WAYNE C. MURPHY)
)
Licensee of Station WDAT(AM))
Amory, Mississippi)
)
Order to Show Cause Why the)
License for Station WDAT(AM),)
Amory, Mississippi, Should Not)
Be Revoked)

ORIGINAL
FILE

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S
MOTION FOR SUMMARY DECISION

1. The Chief, Mass Media Bureau, pursuant to Section 1.251 of the Commission's Rules, moves for summary decision¹ against Wayne C. Murphy ("Murphy"). The Bureau submits that Murphy has violated Section 73.1740 of the Commission's Rules, that there are no genuine issues of material fact regarding that violation, and that the Bureau is entitled to summary decision as a matter of law.

2. The Order to Show Cause and Hearing Designation Order, 7 FCC Rcd 2132 (1992) ("OSC/HDO"), specified an issue to determine whether Murphy violated Sections 73.1740 and/or 73.1750 of the Commission's Rules. Section 73.1740 provides:

- (a) All commercial broadcast stations are required to operate not less than the following minimum hours:
(1) AM and FM stations. Two-thirds of the total hours they

¹ This motion is timely since the Presiding Judge suspended without date the hearing in this proceeding which was scheduled for July 27, 1992. See Section 1.251(a)(1) of the Commission's Rules.

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are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.

(i) Daytime-only AM stations ... need comply only with the minimum requirements for operation 6 a.m. and 6 p.m., local time

(4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

The OSC/HDO also specified an issue to determine, in light of evidence adduced pursuant to the issue whether Murphy had violated Sections 73.1740 and/or 73.1750 of the Commission's Rules, whether Murphy is qualified to be and remain the licensee of Station WDAT.

3. On May 7, 1992, the Bureau sent Murphy a request for admissions. Murphy submitted his responses on May 28, 1992. In those responses, Murphy admitted that Station WDAT² is silent and has been since February 4, 1989; that Murphy received permission from the Commission to remain silent only until June 15, 1989; that he has not requested permission to remain silent subsequent to June 15, 1989; and that Murphy is not financially able to

² Station WDAT is licensed for daytime operation only. Official Notice Requested.

return Station WDAT to operation at this time. Although Murphy also stated that he had "entered into an agreement in principle with a minority person" for the sale of the station, Murphy has not submitted a request to suspend this proceeding pursuant to the Commission's Minority Distress Sale Policy,³ nor have he and the unnamed minority person submitted an assignment application. The Bureau's request for admissions and Murphy's responses were received into evidence by the Presiding Judge at the Admissions Session held in this proceeding on July 2, 1992.

4. Section 1.251 of the Commission's Rules provides that grant of a motion for summary decision may occur only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corporation, 44 FCC 2d 386 (Rev. Bd. 1973). To sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it otherwise is entitled to summary decision. It must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975).

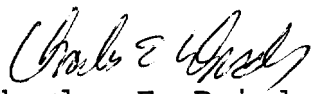
5. The Bureau's request for admissions and Murphy's responses make it clear that Station WDAT has been silent without


³ Statement of Policy on Minority Ownership in Broadcasting Facilities, 68 FCC 2d 979 (1978); Clarification of Distress Sale Policy, 44 RR 2d 479 (1978). See also, Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982).

Commission authorization since June 15, 1989. Further, there is no reasonable likelihood that the station will be returned to the air within the foreseeable future. In such situations, Commission policy is to revoke the station's license. See Radio Northwest Broadcasting Company, 4 FCC Rcd 596 (1989).

6. Accordingly, the Bureau seeks grant of its motion for summary decision, revocation of Murphy's license for Station WDAT,⁴ and termination of this proceeding.

Respectfully submitted,
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July 8, 1992

⁴ While the OSC/HDO also includes a Notice of Apparent Liability for willful and/or repeated violations of Sections 73.1740 and/or 73.1750 of the Commission's Rules, issuance of a revocation order obviates the need for issuance of a forfeiture order. See Radio Northwest Broadcasting Company, 4 FCC Rcd at 597 n. 1.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 8th day of July, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Motion for Summary Decision**" to:

Administrative Law Judge
Walter C. Miller
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Mr. Wayne C. Murphy
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